

9:54 am, May 19, 2021

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

RHIAN TAYLOR, . Civil No. 18-CV-05500-KAM-ST  
Vs. .  
. .  
CITY OF NEW YORK, ET AL. . 100 Federal Plaza  
. Central Islip, NY 11722  
. .  
. April 26, 2021  
. . . . .

TRANSCRIPT OF TELEPHONIC HEARING  
BEFORE THE HONORABLE STEVEN TISCIONE  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For The Plaintiff: LAW OFFICES OF JOEL B. RUDIN, P.C.  
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1           THE COURT: All right, this is Taylor v. City of New  
2 York, et al., 18-CV-5500. Can I have counsel please state your  
3 appearances for the record.

4           MS. TAE: Yes, this is Haran Tae from the Law Offices  
5 of Joel B. Rudin. I'm representing plaintiff Rhian Taylor.

6           MR. DePAUL: And Your Honor, this is Philip DePaul  
7 from the Office of the Corporation Counsel representing  
8 defendants. Good afternoon.

9           THE COURT: Good afternoon. All right, before we  
10 move on to the new stuff let me just go over with you the  
11 materials that I did review that were submitted in camera.  
12 Unfortunately it took a while because the original materials  
13 that were submitted got lost in the transition of my Chambers  
14 from Brooklyn to Central Islip, so I had to get them  
15 retransmitted electronically.

16           So most of them I have, you know, reviewed and have,  
17 you know, made a determination. There's a couple of items that  
18 I wanted to just ask some additional questions about. So I'll  
19 go through them in order, and these are the materials that were  
20 provided to me so to the extent that there's issues about other  
21 materials, I can't answer. I can only tell you which ones I've  
22 gone through. So if there's any missing you have to let me  
23 know.

24           So the files were identified by about privilege, I  
25 guess privilege log numbers. So with respect to privilege log

1 number 7 I find that it's not relevant and doesn't need to be  
2 disclosed.

3           With privilege log number 13, I do think that that is  
4 something that should be disclosed and is not privileged for  
5 purposes of this case. I can't, you know, make any ruling as  
6 to whether any of it would be admissible at trial but at least  
7 for purposes of discovery I think it's disclosable.

8           For privilege log number 24, that's also not  
9 disclosable, not relevant and covered by privilege.

10           Privilege log number 39 is mostly irrelevant but  
11 there are one or two pages that discuss the criminal history of  
12 Hilton and Turner. And those specific items should be, you  
13 know, turned over so you can redact the majority of it. But  
14 you know, two pages I believe that refer to the criminal  
15 history of those two witnesses should be disclosed.

16           Who is Tyrell Garcia, and what relevance does he  
17 have? The next couple of ones are all related to Tyrell  
18 Garcia.

19           MS. TAE: Sure. Your Honor, if I may explain.  
20 Tyrell Garcia is one of the plaintiff's alibi witnesses.

21           THE COURT: Okay.

22           MS. TAE: There are three individuals, Stefan  
23 Alexander, Tyrell Garcia and Omari Lodge who were with  
24 plaintiff at the party that immediately preceded the shooting.

25           THE COURT: Okay.

1 MS. TAE: And they would testify on his behalf that  
2 he was not the shooter.

3 THE COURT: Okay. And then, all right. Because a  
4 lot of these other materials relate to those three witnesses.  
5 They're materials that were prepared by the defense, I guess,  
6 to cross examine these witnesses, and some of it is like their  
7 criminal history and things like that.

8 MS. TAE: Yes, Your Honor, so our position is that  
9 all that information would be relevant because the defendants  
10 have indicated that they intend to depose those individuals.  
11 And so we believe we're entitled to that information as  
12 potential impeachment evidence and we think it would be greatly  
13 unfair if the defendants, you know, have information that might  
14 potentially bear on these witnesses' credibility or that of  
15 plaintiff's, then you know, we wouldn't likewise be able to  
16 have that information as well.

17 MR. DePAUL: Your Honor, if I may be heard. I don't  
18 think that's necessarily accurate.

19 THE COURT: Okay.

20 MR. DePAUL: I believe from my memory of those files.  
21 Included within those files are, for example, draft cross  
22 examinations and note taking by the Prosecutor in preparation.

23 THE COURT: Yes.

24 MR. DePAUL: That is not information that plaintiffs  
25 would be entitled to.

1           THE COURT: I think you have to separate it out a  
2 little bit, because I think you're right. I think there are  
3 materials within those broad categories. And you know, if  
4 you're looking at the privilege log, it's privilege log number  
5 44 and number 45 relates to Tyrell Garcia. Number 47 to number  
6 49 is kind of an amalgamation of all the different defense  
7 witnesses. And then number 67 is interview notes of Stefan  
8 Alexander, Tyrell Garcia and Omari Lodge.

9           MS. TAE: So Your Honor, just to clarify, we would  
10 not be seeking, you know, things that are clearly core or  
11 products such as cross examinations.

12          THE COURT: Yes.

13          MS. TAE: We're seeking what are clearly factual  
14 materials. I mean, just because, for example rap sheets were  
15 gathered by an attorney doesn't make that work product  
16 privileged. But to the extent that there's factual material  
17 and they're including witness statements, we would be seeking  
18 those materials.

19          MR. DePAUL: Well, Your Honor, you know, plaintiffs  
20 can --

21          THE COURT: Okay. I'm sorry.

22          MR. DePAUL: You know, plaintiffs can subpoena the  
23 criminal histories of those individuals. I think the  
24 compilation of those criminal histories does go to core work  
25 product. I think it is my understanding also that they're

1 subpoenaing the criminal histories for the individuals in the  
2 State Court case, and Haran, you can correct me if I'm wrong.  
3 But I believe that they're obtaining, they're already getting  
4 these materials in the State Court case.

5 THE COURT: Well, I don't care how they get them, but  
6 I think they are entitled to the criminal histories of the  
7 witnesses. So to the extent that some of that is included  
8 within these categories of documents, I don't particularly care  
9 how you disclose it to them. If you want to disclose it to  
10 them through this process, that's fine. But I do think that  
11 they're entitled to those records.

12 I agree with you that, you know, the draft cross  
13 examinations and the handwritten notes of the ADA, you know,  
14 with sample questions and things like that are not disclosable.  
15 But you know, in terms of the actual, you know, whether you  
16 turn over a rap sheet or you redact things but turn over the  
17 factual information about the prior criminal record, that stuff  
18 needs to be turned over.

19 MS. TAE: And Your Honor, we would just request that  
20 to the extent that there are factual materials in there that  
21 are not criminal histories, that they would be disclosed as  
22 well.

23 THE COURT: So the only fact and, you know, defense  
24 counsel can, I guess, stop me if I'm missing something. But  
25 the only factual materials I see in there, and this I guess

1 maybe we should talk about is, you know, there are notes from  
2 the Prosecutor, it looks like her interviews with the three  
3 witnesses. I don't know if there were prior reports turned  
4 over about, you know, those interview, because you know,  
5 typically --

6 MS. TAE: There are no reports, I'm sorry, Your  
7 Honor, I didn't mean to interrupt you.

8 THE COURT: Yes. At least on the Federal level  
9 usually we have the agents write up a report of any interviews  
10 conducted of witnesses and that gets turned over. Obviously  
11 things are a little different on the State level. So I don't  
12 know what's previously been turned over. But the factual  
13 summary of those witness interviews needs to be turned over.

14 So if there's no formal report then you've got to  
15 turn over the notes, because that's the only other thing there  
16 is.

17 MS. TAE: Yes, Your Honor. My understanding is that  
18 this is, her notes are the only record memorializing her  
19 interviews of these witnesses. There are no other reports or  
20 recordings.

21 THE COURT: Okay. And that would be privilege log  
22 number 67. Again, I don't know. But if there is no report or  
23 any other, you know, document that outlines that information  
24 then I think you've got to turn over the notes.

25 MR. DePAUL: Okay.

1           THE COURT: But you know, from looking at everything  
2 else, like I said, the only other factual information is the,  
3 you know, the rap sheets, the criminal history stuff and the  
4 interview notes of their interviews. The rest of it is, you  
5 know, not relevant. But those particular factual things I  
6 think need to be turned over.

7           MR. DePAUL: Okay, thank you, Your Honor.

8           THE COURT: And I think that the same goes for  
9 privilege log number 47 to number 49, which is like the  
10 materials for defense cross examination, you know, of defense  
11 witnesses. You know, things like, you know, notes of, you  
12 know, potential questions and all of that stuff is not  
13 disclosable. But to the extent that there's materials  
14 contained in that packet that are, you know, criminal history  
15 and related to prior bad acts, that stuff needs to be turned  
16 over.

17          MR. DePAUL: Okay. Thank you, Your Honor.

18          THE COURT: So privilege log number 51. This was a  
19 Grand Jury memo, it looks like it was prepared, you know, in  
20 preparation for going into the Grand Jury. You know, I've  
21 reviewed it, I'm not really sure what relevance it has. It  
22 doesn't really contain much. Why is plaintiff looking for it?  
23 Maybe you can help me understand why you think this is  
24 relevant.

25          MS. TAE: Sure. So Your Honor, I mean, it's been



1 hard because we haven't really been able to find out from the  
2 defendants kind of the nature of what's inside the memo.

3 THE COURT: Sure.

4 MS. TAE: But we applied for this memo because we had  
5 a basis to believe that the memo contained factual information  
6 concerning kind of what happened leading up to the Grand Jury  
7 involving these two witnesses, Anthony Hilton and Seprel  
8 Turner. And so during discovery in this case we had found out  
9 that Mr., I'm sorry, the NYPD and the D.A.'s office had  
10 attempted to subpoena these two witnesses, multiple times, they  
11 were uncooperative, and that as to Mr. Hilton and to Mr.  
12 Turner, they had applied for material witness applications. I  
13 believe Mr. Steve Ziades (phonetic), he's our local on this,  
14 did these initial applications.

15 They weren't able to locate Mr. Turner but they did  
16 locate Mr. Hilton, got him in for a material witness hearing.  
17 During the course of that hearing Mr. Hilton, you know, denied  
18 knowledge of the shooting, claimed that he was intoxicated  
19 which directly contradicted his trial testimony, told the Court  
20 that he had already told Mr. Cesar (phonetic), the  
21 representative from the D.A.'s office what had happened. Mr.  
22 Cesar also confirmed to the Court that he had had conversations  
23 with Mr. Hilton as to the underlying shooting.

24 And then when he continued to refuse to cooperate he  
25 was actually held and jailed, and then given the choice of

1 either testifying in the custody of the D.A.'s office or being  
2 sent to Rikers.

3 THE COURT: Okay.

4 MS. TAE: And then after he had been jailed for some  
5 period of time he agreed to testify in the Grand Jury. So our  
6 basis is that --

7 THE COURT: None of that is in here. The only thing  
8 that's even tangentially mentioned is just, you know, an  
9 identification of potential, you know, issues with the case  
10 that, you know, just generally mentions cooperation and  
11 willingness of witnesses to come forward. But that's nothing  
12 in terms of, you know, that whole litany of things that you  
13 just talked about.

14 There's no factual information about, you know, the  
15 material witness warrant and all that stuff. That's in a  
16 different one. But the memo itself doesn't really have  
17 anything that would be useful to you.

18 MS. TAE: Okay. You mentioned, Your Honor, that the  
19 memo does identify potential issues with gaining the  
20 cooperation of these witnesses?

21 THE COURT: Just as in a general, like, you know,  
22 what are potential problems, you know, cooperation and  
23 willingness of witnesses to go forward. That's, you know,  
24 generally speaking. There's nothing specific.

25 MS. TAE: Well, to the extent that information is

1 contained within the memo we would request that at least that  
2 information be disclosed, even if that memo is redacted in some  
3 form to not include what Your Honor deems to be irrelevant  
4 information.

5 THE COURT: Let me just look at it again. Sorry, I'm  
6 just pulling it up right now to refresh my memory exactly what  
7 it is. And of course my computer just crashed. Got to love  
8 technology. All right, I don't know that there's anything  
9 surprising about that statement.

10 MR. DePAUL: Right, and it's, obviously it's  
11 generally an issue in every criminal case, so.

12 THE COURT: Yes. So I mean, I don't know how helpful  
13 it is to you. I also don't know particularly why it's such a  
14 bad thing to turn over if it's just that part. Okay.

15 MS. TAE: Yes, Your Honor. So I mean, if it's not,  
16 if there isn't any issue with not disclosing it --

17 THE COURT: Yes, I think turn over that last page,  
18 it's just one sentence basically on the last page where it says  
19 issues.

20 MS. TAE: Thank you, Your Honor.

21 THE COURT: Like I said, nothing ground shattering  
22 about that. I mean, it's basically an issue in every case.  
23 All right, let's see, what's the next thing. So that's the  
24 Grand Jury memo. So number 55 is mostly criminal history and  
25 prior bad acts by Turner and Hilton. This is the part that

1 also has stuff related to the material witness and his arrest  
2 basically at the time that they were going to get him to  
3 testify.

4 MS. TAE: Yes, Your Honor, so we believe that --

5 THE COURT: Yes, I think that more -- yes, I think  
6 that more directly goes to your issue about his lack of  
7 willingness to testify and I would assume what your argument  
8 is, that they essentially forced him to testify. And to the  
9 extent that it involves criminal history, that also goes to  
10 the, yes. So that I think is, that's all covered. I think  
11 number 55 is stuff that needs to be turned over.

12 MR. DePAUL: Okay.

13 THE COURT: It's not, it's all factual. There's no,  
14 like, opinion stuff or anything like that. You know, if I  
15 miss, if there's like a Post-it note somewhere that I missed, I  
16 didn't see any on that, but if there's one like that that has  
17 the Prosecutor's thoughts or something, you can redact that.  
18 But I didn't see anything like that in number 55.

19 MR. DePAUL: Okay.

20 THE COURT: And then number 62 and number 65 are not  
21 relevant.

22 And that's, I think we already addressed number 67,  
23 which is the notes for the interview, interviews of the fact  
24 witnesses.

25 MR. DePAUL: You did, yes.

1 THE COURT: Okay. And that's everything I reviewed,  
2 everything that I received.

3 MS. TAE: Thank you, Your Honor.

4 MR. DePAUL: That's correct, Your Honor. Thank you.

5 THE COURT: All right, so let's move on to the new  
6 stuff. So in terms of the new stuff we've got, the first issue  
7 is the, I guess records regarding Turner's connection to the  
8 Snow Gang. I was a little unclear. It sounded like you were  
9 gathering some of those materials so you are going to produce  
10 something? I'm not sure where you stand on that.

11 MR. DePAUL: Sure, Your Honor. We gathered materials  
12 from the NYPD, from the NYPD's Gang Unit, related to his  
13 suspected involvement in the Snow Gang. We have those records,  
14 we're reviewing them with the PD right now because there are  
15 some law enforcement concerns about some of the pages.

16 THE COURT: Okay.

17 MR. DePAUL: But some of those pages will be produced  
18 to plaintiff.

19 THE COURT: Okay. All right, well, you're going to  
20 have to produce what you can and to the extent that you're not  
21 producing stuff you'll have to put it in a privilege log so  
22 they can look at what you're not producing and see whether  
23 there's anything they want to make out of it.

24 MR. DePAUL: Correct, Your Honor.

25 MS. TAE: Yes, Your Honor. But our request

1 encompasses also records related to Mr. Turner from the D.A.'s  
2 file as well, not just the NYPD's files. And those are the  
3 requests that the defendants are opposing.

4 MR. DePAUL: And the problem for us there, Your  
5 Honor, as we said in our letter, the files for those cases,  
6 especially the Lucas case, is enormous. I've been told it's  
7 roughly over 800,000 pages of documents because it involves so  
8 much social media searches. To require us to go through that  
9 for cases that are not related to this case when plaintiff will  
10 have information related to Turner's involvement in the Snow  
11 Gang is really a, it's really a burdensome argument.

12 MS. TAE: Well, Your Honor, we don't believe that  
13 defendants, I mean, defendants need to actually show that it's  
14 going to be anywhere near as burdensome as they suggest. I  
15 mean, the Lieutenant testified at trial about social media  
16 posts created by Turner. So I mean, it's likely that there's  
17 some sort of organization in the D.A.'s files where they've  
18 either collected his social media posts in a folder or have  
19 some sort of a repository related to Turner specifically and  
20 may be segregated somewhere, indexed or searchable.

21 My understanding is also Mr. Lucas brought a civil  
22 lawsuit in the Eastern District and in connection with that  
23 lawsuit all of the discovery related to the underlying  
24 prosecution was ordered to be disclosed. And so you know, it's  
25 likely that all of this material is already in PDF form or

1 presumably text searchable or at least organized in some way  
2 where they wouldn't have to actually go through the entirety of  
3 the files in order to locate the ones related to Mr. Turner.

4 MR. DePAUL: I just don't think that's the case, Your  
5 Honor, at least any more. I don't know the status of the file  
6 as it exists with respect to the civil case. But I've been  
7 told by the D.A.'s office that it's papers, and they would have  
8 to go through it to find out the information.

9 And I would also say, because we talked about this in  
10 our letter, Your Honor, the Lieutenant testified that Turner's  
11 involvement in the Snow Gang was minimal. He was involved in  
12 it at the beginning but I believe by the time of plaintiff's  
13 second trial he had already been kicked out of the gang because  
14 of his cooperation in this case.

15 So not only is it extremely burdensome for us to have  
16 to undertake this search, it's very tenuous related to  
17 plaintiff's claims because as far as I can tell and based on  
18 the information that I have, Snow Gang wasn't formed until  
19 after plaintiff's first conviction and he was kicked out of the  
20 Snow Gang before plaintiff's second trial.

21 So there's really no overlap here between whatever  
22 involvement Turner had with that gang and the claims related to  
23 plaintiff's two trials.

24 MS. TAE: Your Honor, if I may address that.

25 THE COURT: Yes.

1 MS. TAE: First all we're not just seeking about the  
2 NYPD's records, I mean, we're seeking the D.A.'s records and  
3 they may have conducted their own investigation, and likely  
4 that is actually the case. And we know it's blatantly untrue  
5 that Turner, you know, was, had minimal involvement and you  
6 know, was only involved to the extent that, you know, he was  
7 rapping. I mean, that's untrue from the D.A.'s own records.

8 We received a 2016 gun case for which he got a  
9 cooperation agreement in connection with plaintiff's retrial,  
10 and there his co-defendant stated that Turner was the leader of  
11 the Snow Gang, he had guns on him. And then we also have a  
12 2018 arrest where it shows in an internal document from the  
13 D.A.'s office that they had some sort of system-wide message  
14 alert for Turner that basically flagged whenever he was  
15 arrested. And indicated to the Prosecutor that was in charge  
16 of the case that they should notify the head of the Career  
17 Criminals Bureau, and they should do that before offering any  
18 sort of plea to Turner.

19 And even if he was kicked out, the reasons that he  
20 was kicked out are relevant here because A.D. Ross tried to  
21 argue at the retrial that plaintiff was responsible for the  
22 alleged threats against these two witnesses, that they were,  
23 you know, the victims of violence and assault. And if there's  
24 information in there related to turner being kicked out of the  
25 Snow Gang due to his cooperation against plaintiff, that's



1 relevant information.

2 And so I don't see why we wouldn't be entitled to  
3 that material. I'd also like to --

4 MR. DePAUL: Well, I disagree with -- go ahead.

5 MS. TAE: I'd also like to note that, you know, what  
6 materials are actually in the possession of the D.A.'s office  
7 and not just the NYPD is relevant because it shows what was in  
8 the actual possession of the office, it worsens, you know, Ms.  
9 Ross' Brady violation, especially where she testified in her  
10 court of claims deposition that she was aware that there were  
11 people in her office prosecuting Snow Gang members. But then  
12 she claimed that she had no credible information that Turner  
13 was a member of the Snow Gang.

14 And so we need that information to show the extent to  
15 which we were prejudiced, plaintiff was prejudiced, and we  
16 can't do that unless we have the materials that she's going to  
17 have to turn over.

18 THE COURT: I do think, you know, you're going to  
19 have to do some more exploring with the D.A.'s office about  
20 what materials there are regarding Turner's Snow Gang  
21 membership because, you know, this is one of the things that,  
22 you know, the failure to turn over is, you know, forms the  
23 gravamen of plaintiff's claim to Brady violations among other  
24 things, not turning over evidence of his gang membership. And  
25 I don't know what the records are or what they say regarding

1 his gang membership. But clearly, you know, he was somehow  
2 affiliated with the gang at some point.

3           So I think there needs to be more explanation of, you  
4 know, what materials exist to show, somebody at some point, you  
5 know, testified that he belonged to the gang and was kicked  
6 out. Well, where is that information coming from? It's coming  
7 from somewhere.

8           MR. DePAUL: It's based on the, it was based on the  
9 investigation that Lieutenant Bursaro (phonetic) conducted in  
10 connection with his testimony, and his partner Detective Gayard  
11 (phonetic) in connection with the Lucas trial. And I mean,  
12 those are the records, I mean, that was the records we were  
13 producing from NYPD is related to that.

14           THE COURT: Okay.

15           MS. TAE: I mean, Your Honor, the burden is clearly  
16 on the defendants to show that they are entitled not to  
17 disclose this information. I don't think they've met their  
18 burden here. They haven't conducted any sort of search to  
19 determine, you know, whether there is additional information in  
20 the D.A.'s file separate from the information from Lieutenant  
21 Bursaro and the NYPD and whether there is, like, some sort of  
22 separate repository where information related to Turner are  
23 saved. And I think that's the bare minimum of what they should  
24 at least try to find out. I'd also --

25           MR. DePAUL: Your Honor, I think that --

1 THE COURT: One at a time.

2 MR. DePAUL: I've indicated that file is 800,000  
3 pages long, Your Honor. I mean, I don't understand, and that  
4 it's really not searchable at this stage. So, I mean, I don't  
5 know what more, else I have to show.

6 MS. TAE: I mean, it's possible that the file has, I  
7 mean, there's a file that's literally titled Seprel Turner. We  
8 don't know. And I don't know that defense counsel has actually  
9 ascertained whether or not it's organized in some way. And  
10 maybe, you know, maybe I would suggest that he reach out to  
11 corporation counsel from the Lucas lawsuit. I mean, maybe  
12 they've organized the material there. And it would be the same  
13 material. So I mean, maybe that's also one avenue he could  
14 explore.

15 THE COURT: All right, well, you're going to turn  
16 over the stuff from the NYPD investigation. I think you should  
17 at least consult with the D.A.'s office and find out if there  
18 is, you know, anything that, you know, that they have that  
19 could, for example, again I don't know how the file is  
20 organized but sometimes when they do these large gang or  
21 organized crime prosecutions they do separate out, you know,  
22 suspects and gang members and, you know, have separate files  
23 for each gang member.

24 If they have something like that, that might be  
25 relatively easy to search. If they don't, then you know, I'm

1 not going to make you go through 800,000 pages without  
2 something more specific to go on. But at least find out what  
3 is there.

4 MR. DePAUL: Okay. Thank you, Your Honor.

5 THE COURT: And turn over the NYPD stuff.

6 MR. DePAUL: Yes, yes, Your Honor.

7 MS. TAE: And Your Honor, I'd like to ask about the  
8 Ford prosecution file. This is a separate prosecution from the  
9 Lucas file that we were just discussing. So this file we're  
10 requesting records from because Ms. Ross indicated during her  
11 court of claims deposition that this was a prosecution which  
12 she herself handled where she first found out, allegedly first  
13 found out about Turner's Snow Gang affiliation. So that's the  
14 basis for the request and there, I mean, defendants haven't  
15 made any sort of showing or argue that it would be burdensome  
16 to review that file to see if there's any information relevant  
17 to Turner in there. So we would request that those records be  
18 turned over.

19 THE COURT: That's when the ADA apparently learned  
20 that he had a Snow Gang affiliation?

21 MS. TAE: Yes.

22 MR. DePAUL: That was her testimony, Your Honor. I  
23 did consult with the D.A.'s office with that prosecution, too.  
24 My understanding is that it's in similar form, but I can talk  
25 with them to see what's feasible.

1           THE COURT: See what's feasible. I mean, obviously  
2 if she found out during the course of that prosecution then  
3 there's got to be some material there indicating, you know,  
4 what the gang membership was. This information is coming from  
5 somewhere, it's just a question of finding where it's coming  
6 from.

7           MS. TAE: Thank you, Your Honor.

8           THE COURT: All right. Explain to me the Newsome  
9 materials, because I'm not quite understanding why you need  
10 that for this case.

11          MS. TAE: I'm sorry, Your Honor, before we move on  
12 could we get a date as to when defendants could get back to us  
13 with that information?

14          MR. DePAUL: Your Honor, I'm speaking with the D.A.'s  
15 office tomorrow. I can probably, it's going to take them some  
16 time to figure out what's feasible and what is not. So at  
17 least a week, Your Honor.

18          THE COURT: That's fine, get back to them in a week.

19          MS. TAE: So Your Honor, just moving on to the  
20 Newsome material. So this was a shooting homicide of an  
21 individual named Danyae Champelle. It was prosecuted by ADA  
22 Ross and it involved four co-defendants. And there during jury  
23 selection the defense discovered that hidden within, like 500  
24 pages of discovery there was a DD5 file that showed a  
25 ballistics comparison had been conducted between the

1 Champelle murder and another unrelated shooting that had been  
2 committed two days earlier by an individual named Shameke  
3 Corbitt (phonetic), who Ross was also prosecuting.

4           So the defense moved for a mistrial and the Court  
5 directed Ms. Ross to figure out if there had, in fact, been a  
6 match between those two shootings. She determined that there  
7 had been and subsequently disclosed the DD5 that was dated a  
8 few weeks after the incident back in 2010, four years before  
9 the trial that showed the ballistics match.

10           So then the trial court then had to consider whether  
11 to grant the extraordinary relief of dismissing the murder  
12 charges on the basis that the prosecution had committed an  
13 intentional Brady violation. The Court ultimately did not find  
14 evidence of deliberate misconduct by Ms. Ross, but I think  
15 we're still entitled to the case file on it because the Court  
16 really only had a small piece of the universe of evidence. It  
17 heard testimony from the NYPD but it didn't review what was in  
18 the D.A.'s file, Ms. Ross didn't testify at the hearing.

19           The defendants in that case didn't have the benefit  
20 of civil discovery. Moreover, we weren't a party to that  
21 proceeding, we're not bound by it, neither is the Court. So I  
22 think we are entitled to investigate what happened. And I  
23 mean, even if it wasn't deliberately withheld by Ms. Ross we  
24 think it's still relevant information. I mean, the fact that  
25 she was prosecuting, she was prosecuting this individual

1 Corbitt for the attempted murder, and the request for  
2 comparison was made in that case. And then she knew that there  
3 was a comparison that they requested and, and to be, remain  
4 willfully ignorant of the results, I mean, that's beyond  
5 belief.

6           And you know, clearly it's relevant to the fact that,  
7 you know, she was being deliberately indifferent to her  
8 obligation to seek out Brady information that was within the  
9 possession of either the NYPD or others in her office as  
10 required by Kyles v. Whitley.

11           Additionally, I mean, there's information in that  
12 case law not only relating to the exculpatory ballistics  
13 report, but additional Brady violations that she committed in  
14 connection with the retrial, which obviously was never  
15 litigated in the criminal case because it happened after the  
16 mistrial and because the retrial resulted in acquittal.

17           So those Brady violations included an exculpatory  
18 surveillance video that showed that the star prosecution  
19 witness was not at the location she claimed to be when she  
20 observed the shooting. There's also a cell phone document  
21 which showed that Corbitt when he was arrested, I think 9 hours  
22 after the Champelle murder, on this unrelated attempted murder  
23 was actually found in possession of Champelle's cell phone.  
24 And that, you know, those are additional Brady violations as  
25 well.

1           So I mean, I think all of this information is  
2 relevant to our Monell claim because it's evidence of  
3 additional Brady violations. And even if the evidence showed  
4 that, you know, she didn't intentionally but instead  
5 recklessly, I think it shows that the office's failure to  
6 investigate or discipline her, or to have training and  
7 procedures to ensure that such violations, even unintentional  
8 didn't occur. I think that's all relevant to our Monell claim  
9 involving the D.A.'s office.

10           And I also note that, you know, Ms. Ross will also be  
11 a witness so, you know, this information goes to her  
12 credibility. And it's relevant possibly as Rule 404B evidence  
13 because it shows an absence of mistake.

14           MR. DePAUL: Your Honor, I mean, I think for all the  
15 details that plaintiff's counsel just laid out the most  
16 important takeaway from this is that it has nothing to do with  
17 this case. There was a hearing held in Newsome and the Court  
18 found specifically that this was not an intentional or a  
19 reckless Brady violation, it wasn't intentional, it wasn't even  
20 part of an error committed by the D.A.'s office, it was an  
21 error committed as the Court ruled by the NYPD.

22           Now Mr. Newsome did bring a civil suit and that was,  
23 discovery was had and that case was settled. This plaintiff in  
24 this case doesn't need to relitigate these issues over and over  
25 again simply because it involves the same prosecutor. This



1 would result in many trials about whether ADA Ross committed  
2 Brady violations in any of her other cases, which is just not  
3 relevant, and definitely not proportional to the needs of this  
4 case.

5 MS. TAE: I mean, the question here is whether this  
6 information is discoverable. I mean, that's irrespective of  
7 whether such evidence would be admissible at trial. And I  
8 think here it is. I mean, we have a targeted request, we're  
9 not seeking the full file, we're only seeking the documents  
10 specifically relating to the Brady evidence that was withheld  
11 and what evidence defense requested and what was disclosed.

12 And I don't understand defense argument that this is  
13 unrelated to our case when it's directly relevant to our Monell  
14 claim involving the D.A.'s office.

15 MR. DePAUL: It, you're just looking to get, to find  
16 out if she committed a Brady violation in another case, which  
17 is not your claim.

18 MS. TAE: We already know that she committed a Brady  
19 violation. I mean, your argument is that she didn't commit  
20 intentionally, but she still committed it. I mean, the  
21 prosecution really has an obligation to seek out Brady  
22 information, that's a function of the NYPD.

23 MR. DePAUL: We understand that, but it's not, it's  
24 not the purpose of your, of civil discovery for you to get to  
25 relitigate her career, or the decisions she made in connection

1 with that case, especially when the hearing was held on the  
2 Brady violation in the first trial and a civil claim was  
3 brought by Mr. Newsome. And discovery was held in that case.

4 MS. TAE: We're not relitigating her career, we're  
5 trying to obtain discovery that's relevant to show the office's  
6 deliberate indifference to the need to train and supervise and  
7 potentially discipline prosecutors as to their Brady  
8 obligations.

9 MR. DePAUL: And Your Honor, I will note that, as we  
10 noted in our letter, this case has been consolidated with  
11 Bellamy versus City of New York and another case, Benitez,  
12 which has been settled. Plaintiff's counsel has obtained days  
13 of testimony from executives of the Queens D.A.'s office, both  
14 current and former, about exactly these practices, the need for  
15 training, the need for discipline. They have tens of thousands  
16 of pages of documents on these things.

17 What's different about this one, Your Honor, is that  
18 it's specifically related to this prosecutor and it really  
19 doesn't relate to the policies and practices of the office.  
20 They're really just looking to find another mistake that this  
21 ADA allegedly made. And civil discovery in one case shouldn't  
22 be permitted, it's not that broad to allow them to do that.

23 MS. TAE: I mean, I don't understand it. I mean,  
24 doesn't that actually support plaintiff's claim that this is  
25 relevant because it is evidence regarding potential Brady

1 violations that this Prosecutor may have committed in another  
2 case?

3 MR. DePAUL: But Your Honor, the claims in this case  
4 are related to what happened to this plaintiff, not what  
5 happened to another civil plaintiff or another criminal  
6 defendant. Whether or not ADA Ross committed a Brady violation  
7 in another case, which she didn't, and the Court ruled that she  
8 didn't, is not relevant.

9 And again it's, for us to go down this road and  
10 relitigate another case just increases the scope of discovery  
11 in this case when we should be trying to focus on resolving  
12 paper discovery disputes and moving on to depositions. And for  
13 us to go down this road of litigating an entire civil case that  
14 was already brought and settled is really too far afield.

15 MS. TAE: Your Honor, we're not trying to relitigate  
16 anything, we're trying to investigate what happened in that  
17 case and we do think it's relevant because Ms. Ross is a  
18 witness, her credibility is at issue here and you know, whether  
19 or not she committed a Brady violation intentionally or  
20 recklessly or, you know, failed to follow up is all relevant  
21 information. And I just don't see how, you know, given the  
22 broad discovery rules under the, you know, under federal  
23 discovery, we should be entitled to this information.

24 I mean, I'd also note that Judge Glasser in the  
25 Newsome civil lawsuit sustained a claim that the misconduct was

1 intentional and you know, the City settled for six figures  
2 prior to discovery.

3 MR. DePAUL: Well, I don't, I don't understand why,  
4 Your Honor, I don't think that's necessarily accurate. I don't  
5 know why plaintiff's counsel is saying it was pre-discovery.  
6 ADA Ross was deposed in that case, they were clearly in  
7 discovery. And whatever ruling that was made by Judge Glasser  
8 was done on a Rule 12(b)(6) motion. So Your Honor, I truly, I  
9 think this request is really too far afield. It has nothing to  
10 do with this case, it doesn't have anything to do with the  
11 policies and practices of this office. They just want to find  
12 another mistake allegedly made by this ADA.

13 MS. TAE: I mean, I think the point is we are trying  
14 to discover whether or not it was a mistake or, you know, this  
15 Brady violation was a result of inadequate training,  
16 supervision and discipline by the office. Either way it's  
17 relevant because it either shows that she was intentionally  
18 violating their rights by withholding this information or she  
19 was indifferent to her obligations to seek out Brady  
20 information while it was in the possession of the NYPD. And it  
21 was caused by the office's deliberate indifference.

22 MR. DePAUL: But a court examined this, Your Honor,  
23 and ruled that this --

24 MS. TAE: That doesn't matter.

25 MR. DePAUL: Excuse me, Haran.

1 MS. TAE: I'm sorry.

2 THE COURT: A court ruled on this and determined that  
3 it was a bureaucratic error created as it resulted from the  
4 Police Department, not from the Queens D.A.'s office.

5 MS. TAE: Again, Your Honor, as I mentioned before  
6 first of all we weren't a party to that proceeding, there's no  
7 identity of parties. We didn't have the opportunity to  
8 litigate it. We're not bound by it and the court there only  
9 had a small piece of the evidence, they didn't hear or consider  
10 all of the possible evidence. Ms. Ross didn't testify at the  
11 hearing, they didn't review what was in the D.A.'s file, they  
12 only heard testimony from a representative from the NYPD as to  
13 why the ballistics match wasn't reported to the Champelle  
14 murder.

15 We know that ADA Ross prosecuted the attempted murder  
16 of Corbitt, who knows if she received notification of a match  
17 in connection with that case. I mean, we're entitled to  
18 investigate that.

19 MR. DePAUL: Your Honor, I have nothing further to  
20 say.

21 MS. TAE: I mean we, Your Honor --

22 THE COURT: I'm not going to let you litigate an  
23 entirely different case. You might be entitled to some  
24 limited, very specific records regarding that. But you're  
25 going to have to narrowly tailor it because I'm not going to

1 let you go through and relitigate an entirely separate case  
2 just because it's the same Prosecutor.

3 MS. TAE: Your Honor, we're not trying to relitigate  
4 it, we narrowed our request for documents specifically relating  
5 to the Brady evidence that was withheld, and then a transcript  
6 showing what the defense requested and what was disclosed.  
7 We're not requesting the full file.

8 MR. DePAUL: But Your Honor, basically if you look at  
9 the request it basically is the full file, or something close  
10 to it. They're requesting all evidence, all property vouchers,  
11 all evidence requests. The transcript for every single court  
12 appearance for the entire case. You know, just because there  
13 are sub-categories of information in the request doesn't mean  
14 the request isn't burdensome and it doesn't really encompass  
15 almost the entire file.

16 The requests that they have served are extremely over  
17 broad and really, to the extent that this information should be  
18 produced really would need to be much more targeted than they  
19 are now.

20 THE COURT: Like I said, I think you might be  
21 entitled to some very limited discovery but I'm not going to  
22 let you go full scale into the entire separate case. So you're  
23 going to have to narrow your request. Maybe you can check and  
24 see what discovery was already collected in the other civil  
25 case, that may make it easier to figure out what's there and

1 maybe you could help them narrow and target the discovery  
2 request in a way that, you know, produces the relevant  
3 information without going full scale into a whole separate  
4 case. I really don't think we need to relitigate that whole  
5 thing but there might be some relevant information that's  
6 already been collected, particularly when, you know, there was  
7 another civil case in that, regarding that issue. So maybe see  
8 what's already been collected and plaintiff will have to narrow  
9 the request a little bit more.

10 MS. TAE: Yes, Your Honor.

11 THE COURT: Okay, the reversal memorandums. I mean,  
12 that seems like work product.

13 MS. TAE: And so, Your Honor, I mean, even to the  
14 extent that the memos -- well, sorry, Your Honor, I'll back up.  
15 So our understanding is that the memos often contained not just  
16 an analysis of whether or not certain claims are meritorious  
17 but also kind of their findings of what had happened in the  
18 underlying case and the alleged misconduct. It's factual  
19 material.

20 And you know, even to the extent that it contains  
21 core work product material I think where we are alleging that  
22 the D.A.'s office was deliberately indifferent and, you know,  
23 the state of mind of the executives is directly at issue in  
24 this case here, that privilege would be overcome because the  
25 reversal memos helped to put the D.A. on notice of misconduct

1 and the need for training and/or discipline.

2           So that information is relevant because it would show  
3 that the executives had actual notice about the extent of the  
4 misconduct. And it kind of shows, you know, we can compare  
5 what happened in the memo versus what happened after the D.A.'s  
6 office appealed.

7           So what matters is what the D.A.'s office thought of  
8 the misconduct that was alleged and their findings in  
9 connection with respect to that alleged misconduct. And I  
10 would just note that the City voluntarily produced reversal  
11 memos in connection with the Benitez lawsuit, which is this  
12 other lawsuit also involving a Monell claim against the D.A.'s  
13 office as well as an additional lawsuit, Sevius (phonetic)  
14 versus the City of New York.

15           So the fact that, and they've taken the position that  
16 the fact that they prepared these reversal memos showed that  
17 they weren't deliberately indifferent because it was  
18 disseminated to executives at the D.A.'s office and the trial  
19 prosecutors. So they may contend that their reversal memos are  
20 evidence in their favor on the Monell claim, so you know, if  
21 they do that then I think we're entitled to that information.

22           THE COURT: Well, I mean, to the extent they're going  
23 to use it as affirmatively in their defense, then sure, you'd  
24 be entitled to it. I don't know if they're going to do that in  
25 this case. Are you, Mr. DePaul?



1           MR. DePAUL: I don't, at this stage, Your Honor, I  
2 haven't really made that decision. But at this stage I don't  
3 intend to. I mean, to the extent we plan on using it,  
4 obviously I understand my obligation to produce it. But as  
5 Your Honor said it's pre-core work product and what is  
6 contained in these memoranda are what we said in our letter.  
7 It's the grounds for appeal, grounds for potential appeal based  
8 on a reversal of a conviction by the second department. And it  
9 just, it sets forth what the ADA, particular ADA's file  
10 processes are on the merits of a particular appeal.

11           Plaintiff's counsel knows why these cases were  
12 reversed. They have the cases, they have the court decisions,  
13 there is no reason for them to say that they need this thought  
14 processes of the ADAs on whether or not the office should take  
15 an appeal.

16           You know, and as we also said in our letter I don't  
17 think plaintiff's argument about the fact that they're bringing  
18 a deliberate indifference claim has a lot of merit to it  
19 because that would mean, in any case when a plaintiff is  
20 bringing a deliberate indifference claim there can be no claim  
21 of attorney work product privilege, and I just don't think  
22 that's the case.

23           So I think for those reasons, for all of the reasons  
24 we stated in our letter, this is core work product and should  
25 be protected.

1 THE COURT: Why these four cases specifically?

2 MS. TAE: So we had made a request for a number of  
3 different cases where there have been reversals based on  
4 allegations of prosecutorial misconduct. Mr. DePaul indicated  
5 that of that list only these four have reversal memoranda.

6 THE COURT: Okay.

7 MR. DePAUL: Yes, Your Honor, we consulted with the  
8 D.A.'s office and they informed us that only these four had  
9 reverse memorandums.

10 THE COURT: Had reverse memorandums.

11 MS. TAE: And Your Honor, I just note that the law in  
12 the Circuit is clear where the courts routinely order  
13 disclosure of the work product that's relevant to civil rights  
14 claims. I mean, there's a number of different cases. The  
15 defendants in their opposition brief cited, in their opposition  
16 letter cited to the McCrae case, but there actually the Judge  
17 ordered that core work product related to the ADA's  
18 investigation of plaintiffs be produced, including records  
19 containing the defendant ADA's thought processes and analyses  
20 and recommendations regarding the investigations because the  
21 Court found that information was relevant to the plaintiff's  
22 claims there.

23 THE COURT: Well, I'm not going to, I wouldn't say  
24 it's routine.

25 MR. DePAUL: And since I was involved in that case,

1 Your Honor, there was a particular claim against the ADAs in  
2 that case, they were actually defendants in that case. So the  
3 Court found because there was a claim against the individual  
4 ADAs, for their investigative, well, for their investigation  
5 during their initial hours of the case. That's why the Court  
6 found those documents to be relevant and ordered production of  
7 it.

8 THE COURT: Is there anything more you can tell me  
9 about these four cases?

10 MS. TAE: Sure, Your Honor, I can kind of summarize.  
11 So these were, I can go kind of one by one. There's a Mackey  
12 case, this was a reversal of a robbery conviction where the  
13 Court found that the Prosecutor deliberately set a trap for the  
14 defense at trial by withholding a record book that was  
15 maintained by the complainant which constituted Rosario  
16 material and they had withheld it until after her cross  
17 examination. So you know, damaging testimony had kind of been  
18 unwittingly elicited as a result.

19 The Washington case was a reversal of a rape  
20 conviction that noted the impropriety of the Prosecutor's  
21 summation argument that the defendant's testimony was a lie, a  
22 pile of crock and was fabricated after having had the benefit  
23 of counsel and that, you know, the Jury should not be fooled by  
24 it. So summation misconduct by the trial Prosecutor.

25 The Jones case was a reversal of a robbery conviction

1 where the Prosecutor deliberately attempted through the direct  
2 examination of a Detective to create the unfair impression that  
3 the co-defendant had implicated the defendant to police.

4 And then the Anderson case was a reversal where the  
5 Prosecutor defied the Court's Sandoval ruling and asked a  
6 series of prejudicial questions concerning the defendant's  
7 prior narcotics conviction. And then committed summation  
8 misconduct by vouching for witnesses' credibility and  
9 denigrating the defense and mischaracterizing the defendant's  
10 testimony. So --

11 THE COURT: At least there three of those cases have  
12 nothing to do with Brady violations. They are other kinds of  
13 misconduct. So even if there was some relevant, you know,  
14 information about policies and practices it wouldn't have to do  
15 with Brady, which is the specific claim in this case. It would  
16 just be general misconduct, which I think is, you know, way,  
17 way, too broad.

18 MS. TAE: Your Honor, we just note that our claim is  
19 not only based on Brady violations committed by Ms. Ross, it's  
20 also failure to correct false testimony and the summation  
21 misconduct. And that she failed to correct the false testimony  
22 of the two witnesses as to the benefits that they had received  
23 from the D.A.'s office in connection with their cooperation, as  
24 well as summation misconduct in connection with her comments  
25 about, you know, their lack of benefits. And then also that

1 they had no motive to lie, or no motive other than to try to  
2 get justice for their friend to testify on behalf of the  
3 prosecution.

4           So I would just note that our claim is not just  
5 limited to Brady violations.

6           THE COURT: Okay.

7           MR. DePAUL: Your Honor, I just kind of think that  
8 any of the facts as plaintiff's counsel describes them, I don't  
9 think they're, I still don't think those claims are in any way  
10 relevant to their Monell claim. But still, the problem is the  
11 core work product, right. These aren't the specific  
12 Prosecutor's, you know, these specific cases aren't, have  
13 nothing really to do with this case. So I think any relevance  
14 argument is pretty tenuous.

15           THE COURT: Who did, who prepares these reverse  
16 memorandum?

17           MR. DePAUL: The particular appeal of the ADA? It's  
18 the ADA who handled the appeal, and then it's reviewed by their  
19 supervisors and then goes to the executive level to determine  
20 whether or not they should take an appeal to the Court of  
21 Appeals.

22           THE COURT: Okay.

23           MS. TAE: I would also note the defendants already  
24 have the memos, so it would be a simple matter to produce them.  
25 And I would just say that they are relevant and that the, you

1 know, the factors favoring are the policy reasons underlying  
2 such privilege we think are outweighed by factors favoring  
3 disclosure here.

4 THE COURT: Yes, I'm generally disinclined to allow  
5 the, you know, core work product in that way to be disclosed.  
6 It would probably help if I had a look at exactly what one of  
7 these things looks like. Do you think you could provide one  
8 for the Court to review in camera so I have a better idea of  
9 exactly what we're talking about here?

10 MR. DePAUL: Yes, of course, Your Honor.

11 THE COURT: Maybe get the Mackey one. That was the  
12 Brady one, right?

13 MS. TAE: Yes, Your Honor.

14 THE COURT: Unless you think there's a better one  
15 that you want me to review.

16 MR. DePAUL: I can, I'll take a look, Your Honor.  
17 And if I think more than one will be helpful I can provide  
18 that.

19 THE COURT: All right. Just contact --

20 MR. DePAUL: How --

21 THE COURT: Contact my Chambers and get an email  
22 address from one of my law clerks to send to them directly.  
23 It's just easier that way.

24 MR. DePAUL: Okay. Thank you, Your Honor.

25 THE COURT: And all right, what's the next one? The

1 next issue is the records regarding ADA Pomodore.

2 MS. TAE: Yes, Your Honor, so this comes out of a  
3 high profile murder case against an individual named Petrocetti  
4 (phonetic), which was prosecuted by ADA Pomodore in 2000. In  
5 that case the star prosecution witness Compores (phonetic)  
6 falsely testified at trial that he had been relocated because  
7 he feared for his safety but denied receiving any financial  
8 benefits from the D.A.'s office. He falsely claimed that the  
9 D.A.'s office didn't help pay for his hotel which he had been  
10 staying at for months prior to the trial.

11 Ms. Pomodore at trial disclosed to the defense a one-  
12 page summary that indicated that around \$18,000 had been spent  
13 on housing and meals, but it was a very, kind of vague summary  
14 with very little information. It didn't specify whether that  
15 money was spent on housing for Compores or for his security  
16 detail. It contained no other information. The defense tried  
17 to confront him with that summary but Compores kept denying and  
18 Ms. Pomodore kept objecting.

19 And then many years later Mr. Betti (phonetic)  
20 learned through Foil (phonetic) litigation that Compores had in  
21 fact received around \$20,000 in benefits which included meals,  
22 hotel fees, but also a security deposit and transportation as  
23 well. And that disclosure included cash receipts but showed  
24 that \$3,000 had been paid directly to him and that he had also  
25 declined relocation on three different locations, including

1 when Mr. Betti was returned on extradition.

2           So this undisclosed material showed that contrary to  
3 testimony he knew that the D.A.'s office was paying for his  
4 hotel and other benefits and also impeached his testimony that  
5 he feared for his safety. Mr. Betti then brought a 440 motion  
6 in 2012 based on this evidence and the D.A.'s office opposed  
7 that motion arguing that Ms. Pomodore had lacked actual  
8 knowledge of the documents that she suppressed because at that  
9 time the office had a practice of walling off witness security  
10 records from trial Prosecutors.

11           THE COURT: Okay.

12           MS. TAE: And the Court there rejected the D.A.'s  
13 arguments, and then reversed Mr. Betti's conviction and noted  
14 that, you know, Ms. Pomodore should have corrected the false  
15 testimony, that she was in a superior position than the defense  
16 to know that information and, you know, she should have had the  
17 cash receipts, the prosecution should have had the cash  
18 receipts and declaration forms and turned them over.

19           So then we deposed Ms. Pomodore as a Monell witness  
20 in connection with this lawsuit and then two other related  
21 lawsuits and she testified in her deposition that she was  
22 unaware through 2012 when the 440 motion was filed of any  
23 policy and procedures regarding the obtaining of witness  
24 security files and she also denied knowing whether, she denied  
25 recollection of whether she had obtained these specific types



1 of records that she withheld in Betti and other cases. And she  
2 denied being investigated for misconduct or discipline and she  
3 also, she and the D.A.'s office executives also testified that  
4 there had been no investigation into whether similar Brady  
5 violations had occurred in other cases.

6           So we're seeking these files from her other trials  
7 because we believe the relevancy of both series of Monell claim  
8 that either the D.A. was deliberately indifferent to the need  
9 to train or discipline Prosecutors who committed fair trial  
10 violations or that the D.A. failed to have some sort of  
11 information management system that ensured that Brady  
12 information was communicated to the trial Prosecutors who were  
13 in the position to disclose that information to the defense.

14           THE COURT: Tell me if I'm wrong, but this case  
15 doesn't involve any kind of witness security, does it?

16           MS. TAE: That's correct. It doesn't involve --

17           MR. DePAUL: No, it does not, Your Honor.

18           MS. TAE: It doesn't involve witness security records  
19 specifically, but we believe that defendant's argument that  
20 it's not relevant on that basis is too narrow. We, I mean,  
21 it's impeachment evidence concerning witnesses and we believe  
22 that our Brady claim is broad enough to encompass that. So we  
23 seek these records because, I mean, the records may show that  
24 she had obtained or disclosed such witness security records in  
25 other cases prior to 2012 that would, you know, be evidence of

1 cautious avoidance, possibly deliberate misconduct. If the  
2 records show that she was --

3 THE COURT: This Prosecutor has nothing to do with  
4 this case.

5 MS. TAE: That's correct, Your Honor. She wasn't the  
6 same Prosecutor but, you know, we think it's relevant because  
7 it's supportive of our Monell claim. The records, if the  
8 records show that the, as late as 2012 the D.A.'s office still  
9 had no system for ensuring that benefits concerning trial  
10 witnesses remain known to the trial Prosecutor, I think that  
11 also is evidence supporting our deliberate indifference claim.

12 MR. DePAUL: Your Honor, if I may be heard --

13 THE COURT: If you want to find out whether or not  
14 they had a policy back then, that's one thing. But you're  
15 asking for records of 37 cases where you don't even know  
16 whether or not there was any violation, and they clearly have  
17 nothing to do with this case. If you want to explore whether  
18 or not there was a policy and practice of getting, you know,  
19 WSP information to Prosecutors, you know, that's perfectly fine  
20 if you want to go into the policy and practice.

21 But that's not really what this would accomplish. I  
22 think this is just opening the door for a whole bunch of  
23 irrelevant stuff and unnecessarily expanding the scope of  
24 discovery here. You know, you want to ask witnesses about the  
25 policies and practices regarding the WSP information, how it

1 was gotten to line Prosecutors and whether there's a system in  
2 place, you know, that's all well and good. But I'm not going  
3 to let you get records from these 37 other cases that have no  
4 other bearing on this one. I think that's going too far.

5 MS. TAE: Well, Your Honor, --

6 MR. DePAUL: Your Honor, if I could add something  
7 here --

8 THE COURT: One at a time.

9 MR. DePAUL: Your Honor, if I may be heard on this  
10 point.

11 THE COURT: Yes.

12 MR. DePAUL: I think Your Honor is absolutely  
13 correct, but I will say there has been extensive discovery on  
14 this specific policy issue in the other cases, and this case,  
15 and the consolidated depositions that we've taken. Plaintiff's  
16 counsel deposed the former Chief of the Witness Security  
17 Division who was Chief at the time of the Betti trial. They  
18 have deposed I believe eight current or former executives at  
19 the office and at each of the depositions information related  
20 to the policy related to witness security was asked, there's  
21 extensive testimony on that.

22 And by the way, they all testified consistently with  
23 what they represented in the Betti case, that the witness  
24 security files were maintained separately from the A.D.A.'s  
25 trial file. So all of that testimony is consistent and they

1 also produced I believe in Bellamy about 50 witness security  
2 files were produced to plaintiff's counsel. They have that  
3 information. This request is just targeting a specific  
4 Prosecutor who has no relation to this case.

5 MS. TAE: Well, Your Honor, first of all I'd like to  
6 say, you know, the request encompasses 37 cases but, you know,  
7 there may not have been witness protection involvement in a lot  
8 of these so the actual number might be much smaller. And in  
9 many cases, you know, if there were many cases that actually,  
10 you know, might have significant ramifications because it might  
11 show the extent of the violations that occurred, potential  
12 violations that might have occurred and show that the lack of  
13 information management system as these executives conceded may  
14 have resulted in the rights of many, many other defendants  
15 being violated.

16 THE COURT: Given the --

17 MS. TAE: And you know, withstanding the deposition  
18 of the executives -- I'm sorry.

19 THE COURT: It's not your job in this case to  
20 vindicate the rights of all of these other people who may or  
21 may not have been affected there.

22 MS. TAE: Yes, Your Honor, but, yes, but I think if  
23 the fact, if the evidence shows that there were Brady  
24 violations in many other cases, that shows the extent of the  
25 deliberate indifference by the D.A.'s office for failing to

1 have a system to ensure that witness protection records were  
2 conveyed to the trial Prosecutors. And so we want to see  
3 whether violations continued.

4 THE COURT: Which would make sense if there was any  
5 claim in this case that the violation here had to do with  
6 witness security, which it doesn't. I mean, you know, if you  
7 want to pursue this in another case where there's a witness  
8 security issue that resulted in a Brady violation, I think that  
9 might be fair game. But I think this goes way too far afield  
10 of the relevant issues in this case.

11 So the last issue is the new, the most recent motion  
12 which has to do with his unrelated gun charge. Now the Brady  
13 violation that you are alleging in that was there was a note  
14 indicating that the gun that he pled guilty to possessing was  
15 involved in another shooting?

16 MS. TAE: Yes, Your Honor, that the D.A.'s office had  
17 information that that gun had, that his co-defendant in that  
18 case had used or been involved with that gun in another  
19 shooting.

20 THE COURT: Okay.

21 MS. TAE: And the reason why we're seeking that  
22 information is because defendants have indicated that they  
23 intend to bring a superceding cause defense that plaintiff  
24 would not be entitled to recover damages for the amount of time  
25 he spent incarcerated on this gun charge. And so we request

1 this information to help rebut that defense.

2 MR. DePAUL: Your Honor, I mean, I think it's  
3 abundantly clear that when plaintiff pleads guilty to a  
4 concurrent sentence defendants are entitled to argue that that  
5 time spent incarcerated pursuant to a knowing and voluntary  
6 plea is, he's not entitled to recover those damages. And I  
7 think it's quite telling that plaintiffs attempted to bring  
8 this claim.

9 This was, they sought to amend their complaint to add  
10 this specific claim and Judge Matsumoto was very, very  
11 skeptical that they could insert it because the law in our  
12 view, and it's in almost everybody's view, it's clear that it's  
13 not, it's very unsettled whether or not a plaintiff is entitled  
14 to Brady information before entering into a plea. And then he  
15 really, it's highly doubtful that you can bring a claim based  
16 on that.

17 And apparently plaintiff was persuaded, he decided  
18 not to bring that claim. So it doesn't seem correct to us that  
19 they would not amend the complaint to add the complaint, but  
20 still yet get the ability to obtain discovery on it.

21 But at the end of the day, Your Honor, this isn't a  
22 Brady violation. Just because the D.A.'s office may have had  
23 information that this gun was involved in another shooting  
24 doesn't mean that it's exculpates plaintiff of gun possession,  
25 which he pled guilty to under oath and which he admitted to

1 twice when he was arrested for it.

2 THE COURT: Can you tell me a little bit more about  
3 the circumstances of the gun possession?

4 MS. TAE: Yes, Your Honor.

5 MR. DePAUL: He is riding in a, go ahead, Haran.

6 MS. TAE: Sure. So he was a passenger in a car  
7 driven by this co-defendant, Ms. Coleman. And she was pulled  
8 over I believe because she was driving under the influence, so  
9 I think the reason she was pulled over was because she was  
10 driving erratically. And when they were pulled over the gun  
11 was found under plaintiff's seat. Plaintiff claimed that he  
12 was sleeping, he woke up, she tossed the gun at him and then he  
13 put it under the seat. He didn't know anything about the gun  
14 or where it came from.

15 When they were arrested Ms. Coleman was found to have  
16 bullets matching the caliber of the gun in her pocket. And  
17 eventually they were indicted and the D.A. internal status  
18 sheets note that, you know, originally the D.A. was  
19 anticipating asking Mr. Taylor to cooperate with them against  
20 Ms. Coleman because they had this information that it was in  
21 fact her gun. But then he ended up getting arrested on the  
22 murder charge and, you know, eventually being offered the  
23 concurrent time which he accepted after he had been sentenced  
24 on the murder case.

25 And so, I mean, we're not contesting that defendants

1 are entitled to bring that defense, we are saying that if they  
2 do bring that defense we're entitled to information related to  
3 that case. And the reason why we didn't bring a separate Brady  
4 claim on this case after the pre-motion hearing with Judge  
5 Matsumoto was because she had indicated during that hearing  
6 that, you know, she thought it would be redundant since we're  
7 already claiming all of the damages for the whole period of the  
8 murder and you know, there wouldn't be double recovery, so  
9 what's the point. And that's why we decided not to pursue or  
10 to amend the complaint to include it.

11 But I'd also note that she also opined during that  
12 same hearing that she thought that defendant should turn over  
13 the material.

14 THE COURT: What is it exactly that you're looking  
15 for?

16 MS. TAE: So we are looking for information about  
17 this case, the case file, just to try to figure out what  
18 information the D.A.'s office had about her involvement with  
19 this gun because, you know, it would show the extent of the  
20 Brady violation that occurred.

21 MR. DePAUL: Your Honor, again, there's no claim  
22 related to this. They tried to bring it, they didn't bring it,  
23 there's no claim. And you know, to the extent that they're not  
24 asserting the claim they shouldn't be entitled to get discovery  
25 on the claim.



1 MS. TAE: Your Honor, discovery is not limited to  
2 just claims by the plaintiff, it also encompasses defenses that  
3 the defendants may bring. And they've indicated very clearly  
4 that they intend to bring this as a defense, and we should be  
5 entitled to evidence related to that defense, to rebut it.

6 MR. DePAUL: I don't have anything to add, Your  
7 Honor.

8 THE COURT: You are definitely bringing this defense,  
9 correct, that because he was serving the 15 years for the gun  
10 he wouldn't be entitled to damages for that period for the  
11 wrongful conviction on the murder?

12 MR. DePAUL: It would be, it would be 3-and-a-half  
13 years, but yes, Your Honor.

14 THE COURT: Yes, okay. All right. I mean, I think  
15 they're entitled to something related to that because it is a  
16 defense. It might be a claim affirmatively on their side, but  
17 it is a defense that defendants are asserting and plaintiff is  
18 entitled to materials that would help them overcome that  
19 defense. So --

20 MR. DePAUL: But I think, Your Honor, I think the  
21 problem that I'm having is they wouldn't be able to overcome  
22 that even if they had the claim. The law is clear that, it's  
23 not as clear that plaintiff isn't entitled to Brady information  
24 before his plea, and it was clearly, it was clear at the time.  
25 Then I don't see the argument that he's entitled to rebut the

1 defense. In other words if he was unable to prevail on the  
2 claim on the merits then isn't allowing them to make their  
3 argument just the same thing with respect to damages?

4 MS. TAE: Your Honor, we disagree with that  
5 characterization of the case law. I think the 2nd Circuit case  
6 Avellino still controls, that exculpatory Brady information is  
7 required to be disclosed pre-plea. And you know, regardless,  
8 this is, whether or not we would prevail, I mean, that's a  
9 trial issue. That's not a basis for precluding discovery.

10 THE COURT: I think ultimately this probably is not  
11 going to fly, because I do think the case law is pretty clear  
12 that you're not entitled to it prior to a plea. I'll give you  
13 a very small amount of leeway in terms of discovery. I suppose  
14 it would be useful to, I guess know what information, I guess,  
15 the prosecution had at the time regarding the gun being used in  
16 a prior shooting. Or at least identifying what this prior  
17 shooting was.

18 But you know, keeping in mind even if it was used by  
19 Ms. Coleman in a prior case that doesn't necessarily prevent  
20 him from being guilty of possession of it at the time that he  
21 was arrested. People share guns all the time.

22 MS. TAE: Yes, Your Honor, but I think we're entitled  
23 to explore that, and you know, constructive possession is a  
24 rebuttable presumption. If the D.A.'s office had exculpatory  
25 information about that gun and didn't disclose it, I think

1 that's a Brady violation and I think --

2 MR. DePAUL: I would also, I'm sorry, Your Honor, I'm  
3 sorry, Haran, go ahead.

4 THE COURT: Well, he also admitted to possessing, and  
5 that's part of the plea, so.

6 MR. DePAUL: And Your Honor, he admitted it at the  
7 scene of his arrest. Twice. He said to the police officers  
8 whatever is in the car is mine. And then when his mother came  
9 to the scene he said to her, mom, I did that. And I believe  
10 there was a hearing regarding whether or not those statements  
11 would come in in connection with the gun case, and it was ruled  
12 that they would.

13 THE COURT: See if there's something specific  
14 regarding this prior shooting, you know. See if you can figure  
15 out why they thought the same gun was used in a prior shooting,  
16 whether there was like a ballistics match or something. So you  
17 can always provide that to them and they'll understand what  
18 this prior shooting was.

19 MR. DePAUL: Okay, Your Honor.

20 THE COURT: I don't know if you can go much beyond  
21 that.

22 MS. TAE: Yes, Your Honor. We're just trying to find  
23 out what the information was that was in the D.A. office's  
24 possession about, you know, what the basis for their belief  
25 that she had been involved with this gun previously was.

1           THE COURT: Yes, see if you can figure out where that  
2 information is coming from. You know, if it's something narrow  
3 I think, you know, you can turn it over. But I'm not going to  
4 allow full scale discovery into a whole separate investigation.  
5 But you know, if there's like a ballistics report that shows a  
6 match or something simple like that.

7           MR. DePAUL: Okay, thank you, Your Honor.

8           THE COURT: At least explore, see what it is. There  
9 might be some limited stuff you can turn over, okay.

10          MR. DePAUL: Okay.

11          MS. TAE: Thank you.

12          MR. DePAUL: Thank you, Your Honor.

13          THE COURT: All right, I think that's everything for  
14 now.

15          MS. TAE: So Your Honor, we just request that we have  
16 some sort of production schedule from the defendant. I mean,  
17 we're still waiting on a lot of material that defendants have  
18 already agreed to produce, some of which we've been trying to  
19 get for many years. And so we just --

20          MR. DePAUL: I --

21          MS. TAE: We just believe that, you know, we need  
22 some sort of schedule in order to kind of prevent undue delay.

23          MR. DePAUL: Your Honor, I don't believe a production  
24 schedule is necessary. As we stated in our letter a lot of  
25 this discovery depended on the outcome of the motion to amend.

1 Now that that's decided I'm reviewing and producing materials.  
2 I've made a production of NYPD training materials next week, I  
3 expect to review and produce the Snow Gang materials very soon  
4 once I hear back from -- I have a data base for, I'm reviewing  
5 a data base of thousands of emails obtained from the D.A.'s  
6 office, and now we have, you know, information that I've been  
7 ordered to produce in connection with this motion.

8           It's not, there's been no delay, right. The only  
9 reason that the pace of production has slowed was at first the  
10 pandemic. But second, the outcome of the motion to amend. Now  
11 that that's been decided we can move forward, and I've started  
12 to. So I truly don't believe that there's, it's necessary for  
13 the Court to set production deadlines.

14           THE COURT: Look, --

15           MS. TAE: And Your Honor, I just note that the, I'm  
16 sorry. Your Honor, we just note that the emails from the  
17 D.A.'s office, I mean, Your Honor ordered those to be produced  
18 in December of 2019. I mean, we still haven't received those.

19           MR. DePAUL: Well, I have --

20           MS. TAE: This delay --

21           MR. DePAUL: Haran, that's, first of all that's not  
22 accurate. We definitely produced the information related to  
23 the emails for this case. What I'm talking about and what  
24 we're referring to is the Monell related emails that were  
25 collected in connection with the requests that were made in

1 Benitez. Those are what I'm reviewing now. There was some  
2 technical difficulties in both my office and the D.A.'s office.  
3 Obviously everyone was short-staffed because of the pandemic,  
4 so there was a delay.

5 But we have them, I'm reviewing them and I don't see  
6 a reason why a Court should set up production deadlines for  
7 those. We expect to produce documents, all of the documents  
8 that we have to produce before depositions to the extent we  
9 can, and then we should go on to depositions. But I don't see  
10 that there's been, that there's been any prejudice. We've been  
11 waiting for the outcome of the motion to amend, and now we've  
12 had that.

13 THE COURT: All right. See what you can produce in  
14 the next month. If you're not getting a good, you know, amount  
15 of stuff being produced on a regular basis let me know. But I  
16 don't want to set specific deadlines at this point given the  
17 wide variety of different things we're talking about, some of  
18 which may not even be in defendant's possession yet. But you  
19 know, I'd like to move forward so let's try to get things  
20 produced on a rolling basis as soon as you can.

21 MR. DePAUL: Thank you, Your Honor.

22 THE COURT: All right.

23 MS. TAE: Thank you, Your Honor.

24 THE COURT: Okay, have a good day. Stay safe  
25 everyone, and --

1 MR. DePAUL: Your Honor, we do need to set, we do  
2 need to set a discovery schedule since we technically don't  
3 have one, though.

4 THE COURT: All right. So why don't you confer and  
5 come up with a realistic schedule and submit it.

6 MR. DePAUL: Okay. Thank you, Your Honor.

7 THE COURT: All right.

8 MS. TAE: Thank you, Your Honor.

9 THE COURT: Okay, have a good day.

10 MS. TAE: Okay. Thank you, take care.

11 MR. DePAUL: Thank you, Your Honor. Bye, bye.

12 MS. TAE: Bye bye.

13 \* \* \* \* \*

14 **C E R T I F I C A T I O N**

15 I, **PATRICIA POOLE**, court approved transcriber,  
16 certify that the foregoing is a correct transcript from the  
17 official electronic sound recording of the proceedings in the  
18 above-entitled matter.

19

20

21 /S/ PATRICIA POOLE

22 TRACY GRIBBEN TRANSCRIPTION, LLC DATE: May 14, 2021

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